

1 Department of Labor and Industry
2 Board of Personnel Appeals
3 PO Box 201503
4 Helena, MT 59620-1503
5 (406) 444-0032
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9 STATE OF MONTANA
10 BEFORE THE BOARD OF PERSONNEL APPEALS

11
12 IN THE MATTER OF UNIT CLARIFICATION PETITION NO. 5-2014
13

14 DAWSON COMMUNITY COLLEGE,)
15 Petitioner,)

16)
17 -vs-)

RECOMMENDED ORDER

18)
19 DAWSON COMMUNITY COLLEGE)
20 UNIFIED, MEA-MFT,)
21 Respondent.)
22)
23)
24)
25)
26)
27

28 **I. BACKGROUND AND DISCUSSION**
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30 On February 24, 2014, Dawson Community College (DCC) filed a request for unit
31 clarification with the Board of Personnel Appeals. The petition requested clarification on
32 two positions, the human resource director position and the executive administrative
33 assistant to the president of DCC. Matthew J Cuffe, attorney at law, represents
34 Dawson Community College. Dawson Community College Unified, MEA-MFT (DCCU)
35 is represented in this matter by Maggie Copeland, MEA-MFT east office field
36 consultant.
37

38 On February 25, 2014, DCCU, through Ms. Copeland, responded to the petition
39 opposing the same on the basis that the parties were engaged in negotiations for a
40 successor contract. As evidence of this Ms. Copeland provided the Board a series of e-
41 mail exchanges between herself and Mike Simon, DCC President. This string of e-
42 mails commenced on January 31, 2014, with a request from Ms. Copeland to open the
43 contract for bargaining and subsequent exchanges by President Simon acknowledging
44 the request to open offering dates to meet. A first bargaining session is, in fact,
45 scheduled for early March 2014.
46

47 ARM 24.26.630 (1) provides that a unit clarification petition can be filed only if certain
48 conditions are met and/or the parties mutually agree to waive the requirements of the
49 administrative rule. ARM 24.26.630 (1) (b) specifically provides:
50

1 “the parties to the agreement are neither engaged in negotiations nor within 120
2 days of the expiration date of the agreement, unless there is mutual agreement
3 by the parties to permit the petition”
4

5 In short, with the opening of the contract, acknowledgement of the same, and
6 agreement to meet to bargain a successor contract the parties have engaged in
7 negotiations. Further, DCCU is not waiving its right to object to the petition nor has
8 DCCU agreed to waive the requirements of the administrative rule.
9

10 ARM 24. 26.630 (4) provides:
11

12 “Should an agent of the board determine that the petition is defective in time or
13 form as set forth in ARM 24.26.630(1) and (2), the agent may issue a
14 recommended order that the petition be dismissed. The recommended order is
15 subject to review by the board provided an appeal is timely filed within 10
16 business days of the date the recommended order is mailed.”
17

18 Given that the parties have engaged in bargaining, the petition is defective in time.
19

20 **II. RECOMMENDED ORDER**

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22 It is recommended that the Unit Clarification 5-2014 be dismissed.
23
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27 DATED this 11th day of March 2014.
28
29

30 BOARD OF PERSONNEL APPEALS
31
32
33

34 By _____
35 John Andrew
36 Board Agent
37

38 **NOTICE:**

39
40 Pursuant to ARM 24.26.630(4) this Recommended Order will become the Final Order of
41 the Board of Personnel Appeals unless appealed within 10 business days of the date
42 this Recommended Order is mailed.
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CERTIFICATE OF MAILING

I, _____, do hereby certify that a true and correct copy of this document was mailed to the following on the _____ day of March 2014, postage paid and addressed as follows:

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